

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FORT SMITH DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

v.

CASE NO: 2:07-CR-20013-RTD

CORY J. PHILLIPS

DEFENDANT

**ORDER**

Discovery motions in this case have been referred to the undersigned. The Defendant has filed a Motion for Disclosure of Rule 404(B) Evidence (Doc. 10), Motion for Exculpatory Evidence(Doc. 11), Motion for Disclosure of Any Offer of Leniency(Doc. 14), Motion for Disclosure of Rule 16 Evidence(Doc. 15).

The Government has filed Motion for Disclosure of Evidence by the Defendant(Doc. 23 ) and Motion to Produce Statements(Doc. 24).

The court finds that these Motions have been responded to or require no further action by the court. The court calls to the attention of the parties that criminal discovery motions, while triggering certain obligation on the part of the opposing party, do not require court disposition. Unless and until a motion is filed seeking to compel appropriate responses to a pending discovery motion, the court will act on the belief that the information sought has been timely provided by the party of whom it is requested.

The Defendant has filed additional motions which have been responded to by the Government as follows: Motion to Retain Rough Notes (Doc. 12) and Motion for Jencks Act Material (Doc. 13),

The court, having considered the evidence, law and the arguments made by the parties

orders as follows:

The Motion to Retain Rough Notes (Doc. 12) is **GRANTED**; The government has a general duty to preserve field notes. See 18 U.S.C. Section 3500(e)(1), **U.S. v. Malone**, 49 F.3d 393, 398 (8<sup>th</sup> Cir. 1995), **U.S. v. Grunewald**, 987 F.2d 531 (8<sup>th</sup> Cir. 1993), **U.S. v. Shyres**, 989 F.2d 647, 657 (8<sup>th</sup> Cir. 1990), **U.S. v. Leisure**, 844 F.2d 1347 (8<sup>th</sup> Cir. 1988),

Motion for Jencks Act Material (Doc. 13) is **DENIED**; The Jencks Act does not compel the government to produce a statement or report of a government witness until after the witness has testified on direct examination. **United States v. Green**, 151 F.3d 1111, 1115 (8<sup>th</sup> Cir. 1998).

IT IS SO ORDERED this 26th day of March, 2007.

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/s/ J. Marschewski

Honorable James R. Marschewski  
United States Magistrate Judge